

## **Additional Views of Mr. Coble, Mr. Gallegly, and Ms. Bono**

### **The Role of the Committee on the Judiciary in a Presidential Impeachment Inquiry**

While there have been several impeachment inquiries conducted concerning the conduct of members of the judicial branch, the William Jefferson Clinton impeachment inquiry was only the second this century, and the third in our nation's history, to investigate the President of the United States. A significant question from the outset was, how were we to proceed?

The distinguished Chairman of our Committee, the Honorable Henry J. Hyde, is not only an astute legislator and lawyer, he is also a student of history. Recognizing that the impeachment of President Andrew Johnson was riddled with problems - it involved high political tensions brought about by the ending of the Civil War; it played out over eighteen months; the originating committee was supplanted by a politically stacked committee in a new Congress; etc. - Mr. Hyde thus spent a significant amount of his time studying the impeachment inquiry of President Richard M. Nixon. That inquiry took place in 1973 and 1974 in the Committee on the Judiciary under the chairmanship of Representative Peter W. Rodino, Jr. of New Jersey - a Democrat. So impressed was Chairman Hyde with the perceived fairness and due process of the Nixon inquiry, he made a historically momentous decision to, as closely as possible, adhere to the precedents of that proceeding. Thus, our committee set out to follow the path of "the Rodino model."

On September 9, 1998 the office of the Independent

Counsel, Mr. Kenneth W. Starr, delivered to the House of Representatives a report that contained what the Counsel portrayed as “substantial and credible information that President William Jefferson Clinton committed acts that may constitute grounds for an impeachment.” This report was delivered pursuant to Section 595 (c) of Title 28 of the United States Code, which is part of the Ethics in Government Act. On September 18, 1998, the House passed a Resolution which directed the Independent Counsel report be referred to our Committee with instructions that it be reviewed and released to the public by September 28, 1998. After that on October 8, 1998 by a vote of 258-176 the House approved a resolution directing our Committee to conduct an impeachment inquiry.

At the outset of the work on the Starr referral, Chairman Hyde attempted to guide our Committee on a set of fixed principles which included:

- “ - that no person is above the law, not even the President;
- that we must submit ourselves to the letter and spirit of the Constitution;
- that we must constantly strive to be fair, thorough, and expeditious in all that we do;
- that we must be tireless in gathering and reviewing all of the relevant facts;
- and that we must keep the American people well informed, in part by giving them as much information as possible. ”

In addition, he also adhered to his earlier decision to

follow the Rodino model. Two key documents from 1974 were updated and reprinted as committee documents. One - "Impeachment - Selected Materials" was a recitation of past impeachment precedents, and the other "Constitutional Grounds for Presidential Impeachment: Modern Precedents", was an updated staff report based directly on the same type of report done by the Rodino staff in 1974.

Although the staff study on the question of an impeachment standard was done early in the Nixon inquiry, the Rodino Committee never actually met and discussed the issue. Mr. Rodino recognized then, as did Chairman Hyde some twenty-four years later, that there is no one standard for what constitutes impeachable conduct. The Framers never intended such a standard. As Representative Lawrence J. Hogan said in the closing debate in 1974 about this question, "...Now the first responsibility facing members of this committee was to try and define what an impeachable offense is. The Constitution does not define it. The precedents which are sparse do not give us any real guidance as to what constitutes an impeachable offense. So each of us in our own conscience, in our own mind, in our own heart, after much study, had to decide for ourselves what constitutes an impeachable offense...."

Despite this Chairman Hyde once again went the extra step and actually had Representative Charles T. Canady, Chairman of the Subcommittee on the Constitution, convene a special one day hearing on November 9, 1998 concerning the background and history of impeachment, at which a lengthy list of scholars appeared. Following this, our

Committee upon Chairman Hyde's recommendation also:

- approved a set of inquiry procedures which were taken almost verbatim from the Rodino committee procedures;

- throughout the hearings utilized the five minute rule and generously allotted additional time to Members when needed, and also allowed Members a ten minute opening statement prior to the final debate on the articles of impeachment; and

- allowed the President of the United States the opportunity to have his counsel represent him at committee deliberations, and to question any witnesses summoned by the committee, and to call witnesses to testify on behalf of the President, and to make an oral and written presentation on the evidence before the committee.

For the historical record, a major difference between the Hyde and Rodino inquiries was openness. With the exception of a couple of occasions when the Hyde Committee went into executive session to discuss appropriately sensitive matters, our impeachment inquiry of the President was held in public before the American people. At every opportunity, material was made public, even though the subject matter at times was extremely reprehensible and disgusting. Nevertheless, Chairman Hyde felt honor bound to operate in open, so that all of our citizens could have faith in the Committee's findings no matter where they led us.

History is forever. It covers the pages of the annals of our time for one and all to see, especially our generations to come. The impeachment inquiry conducted under the leadership of Chairman Henry J. Hyde was public, fair, and just. Mr. Hyde often likes to remind us of the oath every Member of Congress is administered upon their swearing in: “I do solemnly swear that I will support and defend the Constitution of the United States against all enemies, foreign and domestic; that I will bear true faith and allegiance to the same; that I take this obligation freely, without any mental reservation or purpose of evasion; and that I will well and faithfully discharge the duties of the office on which I am about to enter. So help me God.”

Our Chairman often quotes “A Man for All Seasons.” In it at one point Sir Thomas More tells his daughter, “When you take an oath, you hold your soul in your hands, and if you break that oath, you open up your fingers and your soul runs through them and it is lost.” At certain times in history, various individuals are placed in a position not of their own choosing. They must step into the arena and with no control of the events or forces to come, they must stand and defend their soul and the principles that form the very foundation of that soul. Our nation was blessed that at this time in our history, such a man walked amongst us, and in the great American tradition, persevered and did that which was both right and just. It was an honor to serve with Henry J. Hyde, and thus will history so record.